

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAY WOODWARD,

Petitioner,

v

UNITED STATES OF AMERICA,

Respondent.

CASE No. 1:05cv11089 JGW

MOTION FOR A CERTIFICATE OF APPEALABILITY

NOW COMES, Petitioner, JAY WOODWARD, Pro Se, and respectfully moves this Honorable Court to grant him a certificate of appealability to the order denying his 2255 motion. In support, he states:

1. According to the relevant statute, a prisoner need only demonstrate "a substantial showing of the denial of a constitutional right." The petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his case or that the issue presented was adequate to encouragement to proceed further. The question is the debatability of the underlying constitutional claim. But, until a COA has been issued, federal courts of appeals lack jurisdiction to rule on the merits of an appeal from the denial of a habeas petition.

2. When a COA is sought, the whole premise is that the prisoner has already failed in the endeavor of convincing a district court that there is certainty of ultimate relief. Barefoot v Estelle, 463 US 880 (1983). Therefore, a petitioner need not convince a court that he would prevail, but only that there is debatability of the underlying constitutional claims. Slack v McDaniel, 529 US 473 (2000); Hohn v United States, 524 US 236 (1998).

3. It is not required that petitioner prove, before the issuance of a COA, that some jurists would grant the petition. Miller-El v Cockrell, 537 US 322 (2003).

WHEREFORE, Petitioner asks for Certificate of Appealability.

Respectfully Submitted this 12th day of August, 2005

By

Jay Woodward
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Box 3000 (MEDIUM)
Forrest City, Arkansas 72336

CERTIFICATE OF SERVICE

I, JAY WOODWARD, after having been duly sworn and under oath, hereby depose and state that on this day I mailed a copy of this motion to the United States Attorney for the District of Massachusetts @ One Courthouse Way, United States Courthouse, Suite 9200, Boston, Massachusetts 02210.

Executed this 12th day of August, 2005.

By

Jay Woodward
Jay Woodward, Affiant

(28 USC Section 1746)